



07-17-08

PTO/SB/31 (01-08)

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**NOTICE OF APPEAL FROM THE EXAMINER TO
THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Docket Number (Optional)

SV-Messenger US

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on

JULY 16, 2008

Signature

Mark D. Fox

Typed or printed
name

MARK D. FOX

In re Application of

DOULTON

Application Number

10/554,022

Filed

APRIL 22, 2004

For

METHOD OF GENERATING A SMS OR MMS
TEXT MESSAGE FOR RECEIPT BY...

Art Unit

2617

Examiner

JOEL AJAYI

Applicant hereby **appeals** to the Board of Patent Appeals and Interferences from the last decision of the examiner.

The fee for this Notice of Appeal is (37 CFR 41.20(b)(1))

\$ 510.00

- ☐ Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee shown above is reduced by half, and the resulting fee is: \$ _____
- ☐ A check in the amount of the fee is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Director has already been authorized to charge fees in this application to a Deposit Account. I have enclosed a duplicate copy of this sheet.
- ☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 504620. I have enclosed a duplicate copy of this sheet.
- ☐ A petition for an extension of time under 37 CFR 1.136(a) (PTO/SB/22) is enclosed.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)
- ☒ attorney or agent of record. 38,677
Registration number
- ☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34. _____

Signature

Mark D. Fox

Typed or printed name

Telephone number

(415) 271-7772

Date

JULY 16, 2008

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 2 forms are submitted.

This collection of information is required by 37 CFR 41.31. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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on JULY 16, 2008Signature Mark D. FoxTyped or printed name MARK D. FOXIn re Application of DOULTON

Application Number

10/554,022

Filed

APRIL 22, 2004

For

METHOD OF GENERATING A SMS OR MMS TEXT MESSAGE FOR RECEIPT BY A WIRELESS...

Art Unit

2617

Examiner

JOEL ATAYIApplicant hereby **appeals** to the Board of Patent Appeals and Interferences from the last decision of the examiner.

The fee for this Notice of Appeal is (37 CFR 41.20(b)(1))

\$ 510.00

- ☐ Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee shown above is reduced by half, and the resulting fee is: \$ _____
- ☐ A check in the amount of the fee is enclosed.
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Mark D. Fox
SignatureMARK D. FOX
Typed or printed name(415) 271-7772
Telephone numberJULY 16, 2008
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☒ *Total of 2 forms are submitted.

This collection of information is required by 37 CFR 41.31. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Mark D. Fox, Esq.
558 Sutter Street
Suite 555
San Francisco, CA 94102

July 16, 2008

Commissioner for Patents

Mail Stop AF
P.O. Box 1450
Alexandria VA 22316

Application Number: 10/554,022

Title: METHOD OF GENERATING A SMS OR MMS TEXT MESSAGE FOR RECEIPT BY A WIRELESS INFORMATION DEVICE

Inventor Name: Daniel Michael Doulton

Art Unit: 2617

PCT Filed: April 22, 2004

Dear Commissioner:

Please find attached in the above referenced application:

- 1) Applicant's Notice of Appeal (1 page, 2 copies); and
- 2) 37 CFR 1.132 Affidavit of Daniel Michael Doulton (8 pages).

The applicant requests that the enclosed 37 CFR 1.132 Affidavit of Daniel Michael Doulton (hereinafter "Affidavit") be entered to the file under MPEP 714.12:

"An affidavit or other evidence filed after a final rejection, but before or on the same date of filing an appeal, may be entered upon a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented in compliance with 37 CFR 1.116(e)."

The applicant hereby requests that the admission of the enclosed Affidavit to the file is necessary because the Affidavit provides important evidence of secondary considerations, which are germane to the issue on appeal: 103(a) obviousness as recently explained by the Supreme Court case, *KSR International Co. v. Teleflex Inc. (KSR)*, 550 U.S. ___, 82 USPQ2d 1385, ___ (2007).

Further the applicant has good and sufficient reasons why the Affidavit was not earlier presented.

As established in Paragraphs 4 and 5 of the Affidavit and as shown in the record in this application, the applicant's response to the last non-final office action was filed with the Office on March 17, 2008. Two days later, on March 19, 2008 SpinVox Limited, the assignee of this applicant, secured more than \$100 million in private placement funding. On the day the applicant responded to the non-final office action, March 17, 2008, SpinVox Limited was prohibited from disclosing this information to the general public.

Further the same information contained in the Affidavit was filed with the Office on April 8, 2008 by another 1.132 affidavit for a related action: Application, 10/553,926.

Accordingly having established good and sufficient reasons why this Affidavit is necessary and was not earlier presented, the applicant respectfully requests that the Affidavit be duly entered into the record accordingly.

Respectfully requested,

A handwritten signature in black ink, appearing to read 'Mark D. Fox', with a stylized flourish at the end.

Mark D. Fox, Esq.

Reg. No. 38,677



37 CFR 1.132 AFFIDAVIT OF DANIEL MICHAEL DOULTON

Daniel Michael Doulton, hereby declare that all statements made in this Affidavit based on information and belief is believed to be true. I further declare that all statements made in this Affidavit based on my own personal knowledge are true.

1. I, Daniel Michael Doulton, am the inventor in Application Number 10/554,022 entitled "METHOD OF GENERATING A SMS OR MMS TEXT MESSAGE FOR RECEIPT BY A WIRELESS INFORMATION DEVICE" (hereinafter the "Voice Messenger '022 Application") and Application Number 10/553,926 entitled "METHOD OF PROVIDING VOICEMAILS TO A WIRELESS INFORMATION DEVICE" (hereinafter the "VoiceMail View '926 Application").
2. I, Daniel Michael Doulton, am the cofounder and Chief Strategy Officer of SpinVox Limited, the assignee of record of the Voice Messenger '022 Application and VoiceMail View '926 Application.
3. Claims 1 to 20 of the Voice Messenger '022 Application, as filed with the US Patent and Trademark Office on March 17, 2008 describe fundamental inventions to the core business operations of SpinVox Limited (hereinafter "SpinVox").
4. Attached to this Affidavit as is a true and correct copy of a two (2) page press article from Reuters dated March 19, 2008 entitled "SpinVox raises \$100 million from Goldman, others" (hereinafter "Reuters Press Release").
5. On March 17, 2008, two days before the date of the Reuters Press Release and the date claims 1 to 20 of the Voice Messenger '022 Application were filed with the US Patent

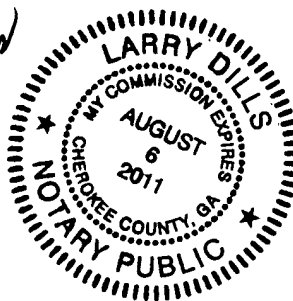
and Trademark Office, the information about SpinVox raising \$100 million in funding could not be disclosed to the general public.

6. Attached to this Affidavit as is a true and correct copy of a four (4) page press article titled "Freedom for Prisoners of Voice Mail" from The New York Times dated February 15, 2007 (hereinafter "NY Times Article").
7. On April 8, 2008 I executed a 37 CFR 1.132 affidavit for the VoiceMail View '926 Application that was duly admitted by the US Patent and Trademark Office. This affidavit had the Reuters Press Release and NY Times Article attached as exhibits.

This Affidavit being duly signed and executed on July 11th 2008 in Alpharetta, Georgia.



Daniel Michael Doulton



REUTERS

Print | Close this window

SpinVox raises \$100 million from Goldman, others

Wed Mar 19, 2008 7:55pm GMT

By Anupreeta Das

SAN FRANCISCO, March 19 (Reuters) - SpinVox, which converts voicemail messages into text and sends them to a recipient's inbox or phone, has raised more than \$100 million in funding from a Goldman Sachs Group Inc (GS.N: Quote, Profile, Research) unit and other institutional investors, the company said on Wednesday.

This third round of funding values London-based SpinVox "in excess of \$500 million," co-founder and Chief Executive Christina Domecq said in an interview.

SpinVox plans to use the money to expand its presence in North America and introduce voice-to-text services in more languages, she said.

SpinVox has deals with 12 cell phone carriers globally, including Canada's Rogers Mobile and Alltel Wireless, the fifth-largest U.S. carrier, and plans to double that number this year.

It is negotiating with all the top U.S. network carriers and expects to announce two deals in the next quarter, Domecq said.

"Voicemail is not a very sexy subject," she said. "The carriers are all looking for ways of driving new revenue streams, and increased voice and text traffic is the perfect way to do that."

Domecq estimated that the global market for voice-to-text services in English, French, German and Spanish -- languages in which SpinVox already offers its service -- is worth about \$5 billion annually.

PORTUGUESE, ITALIAN, ARABIC

SpinVox, which has 300 employees and offices in nine countries, will use a portion of the \$100 million to develop its service in Portuguese, Italian and Arabic, Domecq said.

SpinVox's software works simply by converting a voicemail message into text, which it then e-mails to a computer or sends via SMS to a phone. It removes the need to dial one's voicemail, punch in a password and listen to messages.

"It's a simple idea built out of frustration," said Domecq, a 31-year-old IT

entrepreneur who co-founded SpinVox four years ago.

"Why do I have to pull everything out of my purse and get out a pen and paper to jot down a voicemail?" she said, explaining how the idea was born. "I just didn't get it."

The latest round includes funding from GLG Partners, Blue Mountain Capital Management and Toscafund Asset Management, and doubles the amount raised so far to \$200 million, Domecq said. The company previously raised cash from angel investors and private equity firms.

SpinVox is also working to provide voicemail conversion for office phone systems. It earlier signed an agreement to provide its service for users of Skype, which is owned by eBay Inc (EBAY.O: [Quote](#), [Profile](#), [Research](#)). The service is expected to launch in the second half of this year, Domecq said.

It also has a downloadable application for social networks Facebook and News Corp's (NWSa.N: [Quote](#), [Profile](#), [Research](#)) MySpace.

Goldman Sachs International advised SpinVox on the latest round of funding.

The company has no immediate plans to go public or sell itself but is exploring all options, Domecq said. (Editing by Brian Moss)

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February 15, 2007

STATE OF THE ART

Freedom for Prisoners of Voice Mail

By **DAVID POGUE**

When you dig down past the megahertz and pixels and scroll wheels, all technology boils down to variations of “time is money” — and nobody knows it better than cellphone carriers. Every time you use your cellphone, you’re spending money.

No wonder that when you call to check your messages, the carriers make you listen to a woman who has evidently overdosed on Ambien. “You have. Seven. New. Messages. You have. Two. Saved messages. To listen to your messages, press 1. When you are finished, you may hang up, or press 5 for more options. I will now read the Manhattan White Pages.”

For those 20 seconds, you’re a sitting duck, forced to spend both time and money. The carrier is using technology to squeeze a few more cents out of you every day.

But now you can fight technology with technology. Two new services, SpinVox and SimulScribe, use voice-recognition software to transcribe voice mail messages into e-mail.

Why is this a brilliant, life-changing development? Let us count the ways:

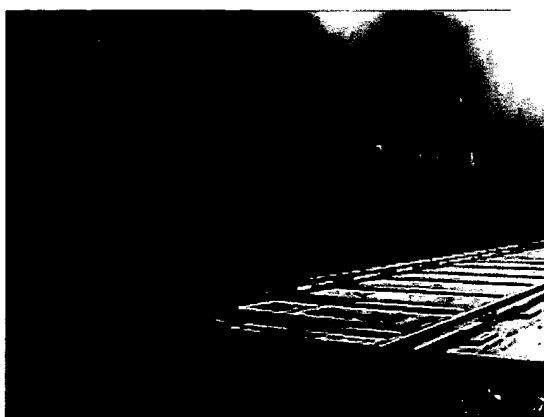
1. You can read message transcripts in a fraction of the time you’d spend listening to them.
2. You now have random access to your messages. You will never again sit through five chit-chatty messages, unaware that Message 6 is a time-critical bit of urgency from your boss, your spouse or a friend who wants to give away an extra concert ticket.
3. You don’t have to take notes as you listen, writing down people’s names and numbers. The notes have already been taken for you.
4. Text is searchable, sortable, copyable, pastable, printable and forwardable. What an awesome thing, to have a Find command for your entire backlog of voice messages. Want to pull up that message about the Smithsonian merger? Just hit Find in your e-mail program, type “merger,” and pluck it out of the haystack.
5. You can opt to have the transcriptions sent to your cellphone as text messages, too (or instead), for when you’re on the go. This works perfectly on e-mail phones like the Treo and BlackBerry. It works less perfectly on other cellphones, whose low length limit means that each transcript gets split into several text messages.
6. You can check your messages even if you’re deaf — or temporarily so, because you’re in the subway or at a rock concert.

7. SimulScribe lets you save the momentous messages of your life — the marriage proposal, the “he’s just not into you” call, the “you’re hired” call — in a handy audio archive of your life. That’s because each SimulScribe e-mail message arrives with an audio-file attachment. Its primary purpose is to provide you with a backup, to check against the transcription. But you’ll quickly discover how nice it is to be able to save that file separately for future reference, just the way you might save important e-mail.

8. You can copy people’s phone numbers right into your address book (either your computer’s or your phone’s).

9. If a voice mail transcript arrives on your Treo, BlackBerry or other smartphone, you can generally call the person back just by clicking the phone number where it appears in the message.

10. You can do “typing” for work when you’re on the run. That is, you can leave messages for yourself, dictating e-mail, ideas or whatever, thus turning the service into a virtual secretary. In fact, SpinVox can even post transcripts directly to your blog.



Die Soldaten: Opera in the Armory

All right, all right — you’re probably thinking, “Down, boy.” And it’s true that there are a few gotchas along the way.

SimulScribe (simulscribe.com) is available right now. It costs \$10 a month, which covers 40 messages; each additional transcription costs 25 cents. This can become very expensive if you get a lot of messages. The company plans to offer better deals for frequent phoners — including an unlimited plan — in the coming months.

SpinVox, on the other hand, has been operating in Britain for some time. It will be free during its year of testing in the United States.

To sign up for the free year, send an e-mail inquiry to gamma@spinvox.com. (Ignore the “seven-day trial” offered at spinvox.com; that’s just for British customers.) Eventually — in the second half of this year, SpinVox says — the service will be available in the United States only through cellular carriers; pricing hasn’t been set. That’s right: you’ll be able to spend more money with your carrier to spend less time on its voice mail system.

When you sign up for either service, an e-mail message gives you instructions for reprogramming your phone. For most carriers, that involves dialing a string of numbers with * and # characters; for Sprint, you have to call customer service. Either way, this process reroutes incoming messages to the SpinVox or SimulScribe service. (Until you re-record the greeting, callers hear a generic “Welcome to SimulScribe” or “Welcome to SpinVox” message.)

From now on, every time someone leaves you a message on your cellphone voice mail, it costs you airtime, because the call has to be forwarded to SpinVox or SimulScribe. (Both services are, in principle, compatible with your home phone, too, as long as your phone company offers something called “no-answer call

forwarding.”)

On the other hand, you no longer eat up airtime listening to those messages, so your net airtime cost is nothing. The exception, again, is Sprint, which charges 20 cents a minute for forwarding. Ouch.

Callers leave messages as usual; they don't have to do or say anything different. In two to five minutes later, you get a new e-mail message, cellphone text message, or both. The subject line identifies the caller's phone number and the time and date of the message.

The body of the message contains the transcript. Since it's computer-generated (no humans hear your messages), it's not always 100 percent accurate. But considering the poor quality of cellphone audio, it's astoundingly close.

Here, for example, is the transcript of a test message left by a friend: “Hi, David. This is Adam. I just wanted to say I had a good time at dinner last night. One thing, though, I noticed that you dropped a bunch of the banana peel on your way out in the driveway, and my wife walked out of the house this morning and slipped on a few, and she broke her head. So anyway, when I see you at work tomorrow I'll give you the receipt from the doctor and just have you pay for it. Anyway, see you soon. Bye.”

In this message, only two words were misrecognized: “peel” should have been “peels,” and “broke her head” should have been “broke her hip.” The software added the punctuation — not bad.

SpinVox has an affinity for run-on sentences, using commas instead of periods between sentences; “(?)” and “___” denote words it's not sure about. SimulScribe may punt on names, typing, for example, “(phonetic: Ka Reema)” for Karima and substituting “(garbled)” where a phrase was truly unintelligible. But you virtually always get the point, especially because both services nail mission-critical digits like phone numbers and times.

If in doubt about a SimulScribe transcription, you can play the audio recording right there in the e-mail message. SimulScribe also offers a terrific Web page, where all your messages, past and present, await in an unlimited in-box-style list.

Neither service interferes with your ability to check your voice mail the traditional way — by dialing an access number from your cellphone and sitting through the playback. In fact, with SpinVox, that's the only way to hear the original message. You can also switch back to your carrier's voice mail system at any time, temporarily or permanently.

Thanks to its in-message audio attachments, SimulScribe is superior at the moment, although it's hard to resist SpinVox's free one-year offer. Either, however, will equip you with the most powerful efficiency tool to arrive in a very long time. Both are extraordinarily good at performing two kinds of conversions: audio into text — and money into time.

E-mail: Pogue@nytimes.com

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